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IN THE

Supreme Court of the United States

October Term 1967
No. 1347

B. L. SUHL and MARGARET WIERMAN,
Petitioners,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF.

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Preliminary Statement.

In our reply brief we shall endeavor to limit our brief to clarification of the issues which the Government seems to have confused. Otherwise, we shall rely upon the presentation of the issues made in petitioner's brief attached to the petition for the Writ of Certiorari as Appendix No. 4. (Pet. App. 87-95.)

Questions Presented by This Review.

I.

An examination of petitioner's concise statement of questions presented for review (Pet. 11-12) will disclose that the important questions raised by petitioners extend much farther than do those which are mentioned in Government's brief. (Gov't Brief, p. 2.)

The first five questions raised (Pet. 11) are most important to petitioners and are directed to the question

of the use of false evidence by the government upon which to obtain a conviction, and whether or not the testimony of accomplice Goodwin is incredible and unsubstantial.

II.

Improper cross-examination of Defendant Suhl, over objection, with reference to the truthfulness of Referee's findings of fact [Gov't Ex. 55 for identification] which were not final and were then pending on appeal, and which findings etc. were reversed by the United States Court of Appeals for the Ninth Circuit on the 28th day of June, 1965, and only a few days after the jury's verdict herein, were highly prejudicial to the rights of defendants. Not only were these findings set aside by the order of the court and became ineffective for any purpose, but the truthfulness of the facts found in the findings have never been legally proven, and all matters mentioned in the findings are foreign and immaterial to the issues involved in the trial herein. The effect of this examination and the questions asked were in the nature of accusatory misconduct by petitioners on a subject matter not involved in the criminal indictment, were immaterial, and which were never attempted to be established as a fact.

ARGUMENT.

The Government chooses to refer to the false testimony of Goodwin as "inconsistencies and internal contradictions." The petitioners contend that Goodwin's testimony is nothing more or less than plain lies and deliberate perjury in an effort to throw all the blame on Mrs. Wierman, who was a bank officer, and to relieve himself, while he was the bank officer in charge of the operations of the bank.

As will be observed from a reading of the quoted testimony of Goodwin (Pet. App. No. 3, p. 49 of Petition for Writ of Certiorari) and particularly at page 68 thereof, Goodwin in making his statement to the Federal Bureau of Investigation on June 3, 1964, says that when the first check drawn on Vaughn's account came in (Check of Sept. 20, 1963, for $46,711.00) Margaret Wierman wasn't *there, so he held "them" in the rejected cash register for several days, from "9-18 and 9-19-63 until receiving funds to cover this on 9-20-63". That "when Margaret Wierman returned she had a book of blank checks which had already been presigned by Bud Suhl." —"From there on whenever a large check would come in to be charged against Ronald Vaughn's account I would be informed of this by the girl who was handling the incoming cash letter."

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*In reference to Margaret Wierman being away from the bank on September 18 and 19, 1963, note her quoted testimony (Pet. App. No. 2, p. 22) at page 30 thereof, where she denies being away from Covelo on Sept. 8 and 19, 1963, and says that she was at the bank, working; that she attended the bank's board of directors meeting on the night of Sept. 18, 1963 and offers documentary proof of the fact she was there in Covelo at the time. [R. Tr. p. 1122, line 16, to p. 1135, line 1.] Also, if Margaret Wierman had on Sept. 20, 1963 a book of blank checks signed by Suhl, there would be no occasion or necessity for her to sign Suhl's name to a check on this date, as we shall soon see was later testified to by Goodwin.

Testimony of Goodwin at the Trial.

On direct examination of Goodwin with reference to where he obtained the Suhl checks for deposit in the Vaughn account, he says:

"Q. Do I understand, Mr. Goodwin, the same day that a Vaughn check came in a Suhl check was prepared in the same amount? A. That is correct.

Q. Who prepared the Suhl check? A. I did.

Q. On every occasion? A. I would think so, yes.

Q. Where did you obtain a Suhl check or such preparation? A. There were three places to obtain them, one was from Mrs. Wierman. *In the beginning she supplied the check and the signature to the check.*

Q. When you say 'supplied the signature to the check,' what do you mean by that? A. She signed the signature of B. L. Suhl to the check.

Q. She, herself, signed— A. That is correct.

Q. —the signature. On one or more than one occasion? A. On one or more than one occasion.

Q. Was there ever any occasion when she handed you a Suhl check which already had a signature on it? A. That is correct.

Q. Was that one of the three possibilities? A. That is the first.

Q. All right, the second possibility? A. The second possibility was that the check which was already drawn against the account of B. L. Suhl signed by him, a personalized check, would be

handed to me to fill in the date and the amount and the payee.

Q. Be handed to you by whom? A. By Margaret Wierman. Or I would have some of these checks, there were occasions that I had some of these checks in my desk and I used those to credit the account of Mr. Vaughn.

Q. You say there was occasions when you had some of those checks in your desk. By those checks, what do you mean? A. The pre-signed checks by B. L. Suhl.

Q. A pre-signed check, a check already signed by Suhl, but the other writing not filled in? A. That is correct.

Q. During the period of time you had such checks in your desk drawer where did you get them? A. From Margaret Wierman. She mailed them to me from Los Angeles.

No. There was another, I would take a universal check, which is a check that does not have the bank filled in, I would fill in the name of the bank, the date and the amount and supply the signature of B. L. Suhl myself.

Q. On one or more occasions you yourself signed Suhl's signature? A. I did." (Emphasis ours.)

The first of these checks was deposited in Vaughn's account on Sept. 20, 1963, and the emphasized portion of the above question shows that the witness definitely says that Mrs. Wierman furnished both the check and the signature to this check which was for $46,711.00, and she did this notwithstanding the fact that the witness told the F.B.I. in his statement that when Mrs.

Wierman returned on Sept. 20, 1963 she brought
her a book of checks which had been presigned by

There was a mistrial in this case which immed
preceded the trial where Goodwin was examined in
by the Government [see cross-examination of Goo
R. Tr. p. 284, line 1, to p. 287, line 11] where Goo
admitted that in the mistrial he had testified that
the first of these checks came through, Mrs. Wie
was at the bank, that he advised her that a
check had come in on the account of Vaughn made
able to Suhl and that Vaughn didn't have the mon
cover the check and that Mrs. Wierman then obt
funds from Suhl in Los Angeles by way of wire t
fer. (See above quoted testimony, Pet. App. N
p. 49, at pp. 64-65.)

So it appears that the witness has stated that
check of Vaughn's dated Sept. 20, 1963 was pai
a deposit in Vaughn's account with a Suhl check w
the signature of Suhl was signed by Wierman, w
Wierman furnished a presigned check signed by
and by way of wire transfer.

See also testimony [R. Tr. p. 295, lines 11-25, w
is copied in Pet. App. No. 3, p. 49 at p. 69.]

At [R. Tr. p. 314, line 2, to line 14, p. 317] (S
App. No. 3 at p. 77) where Goodwin finally a
under cross-examination that he, himself, signed S
name to the check for $46,711.00 dated Septembe
1963.

Goodwin's Testimony Regarding Check of December 12, 1963 False.

Goodwin testified [R. Tr. p. 236, line 18] (Pet. App. No. 3, p. 49, at p. 55) that the Suhl check dated Dec. 2, 1963 for $131,996.00 was prepared by him at Margaret Wierman's direction and that Mrs. Wierman signed Suhl's name thereon in his presence [R. Tr. p. 236, line 18, to p. 238, line 11.] (See also p. 56, Pet. App. No. 3.)

This check of Dec. 2, 1963 is marked Deft. Exhibit I. Goodwin on cross-examination [R. Tr. p. 281, line 14] (See also p. 61, Pet. App. No. 3) says he saw Margaret Wierman sign Suhl's name to this check; that there is no question about it, he is certain.

He says it would be a surprise for him to learn that the sale at which she participated was in the lawyer's office in Los Angeles on Dec. 2nd, because "she could not be in two places." And he repeats "She was in the Frontier Bank." It is his testimony that she was at the Frontier Bank that day, no question about it, and she signed this signature as it is on the exhibit on Dec. 2nd, right in front of him. [R. Tr. p. 281, line 14, to p. 283, line 18.] (See also Pet. App. No. 3, p. 62.)

Notwithstanding this positive testimony by Goodwin, Attorney Ernest E. Johnson of Los Angeles appeared as a witness, with his records, and testified that Mrs. Wierman was in his office in Los Angeles on Dec. 2, 1963 and produced documentary evidence of the meeting. Mrs. Wierman denied writing Suhl's name on the check in question or knowing anything about it. She testified to being in Los Angeles on Dec. 2, 1963 and offered documentary evidence in the form of gasoline charges, etc. showing her presence there. Also, Sher-

wood Morrill appeared as a handwriting expert and testified that Mrs. Wierman did not sign the check in question, Deft. Exhibit I, or any of the other checks shown to him. [R. Tr. p. 868, line 23.] (See also Pet. App. No. 2, p. 40.)

What stronger proof could be offered in support of petitioners' contention that Goodwin's testimony involving Mrs. Wierman in this transaction was false than that appearing in the record? It certainly established without question that Goodwin's testimony was both incredible and unsubstantial and was downright false.

Exhibit "J", the Check of December 4, 1963.

The evidence of the check of December 4, 1963, marked Exhibit "J" is very similar to that of Dec. 2, 1963. The handwriting expert testified that the name "Suhl" on this check was not written by Mrs. Wierman.

Check of November 22, 1963.

Mrs. Wierman testified [R. Tr. p. 1094, line 22] that on Nov. 22, 1963 she was at the residence of Mr. and Mrs. William Richards in Monterey Park, Los Angeles County. She produced two documents, a Standard Oil or Chevron gasoline charge slip for gas purchased in Los Angeles on that day, and a telephone charge made while there. She recalled this being the day that President Kennedy was assassinated. She had a conversation with Ronald Vaughn on that day and she phoned Goodwin at Covelo from Los Angeles. Goodwin admits the phone call.

Goodwin had previously testified that the check of Nov. 22, 1963 was one of the checks which Mrs. Wierman signed at the bank [R. Tr. p. 346, line 14] and he

later admits that she was not at the bank on that day. [R. Tr. p. 346, line 14, to p. 349, line 16.] (See Pet. App. No. 2, p. 80.)

This is another of the checks which Mr. Morrill, the handwriting expert, says Mrs. Wierman did not sign.

The above relates only a part of the false and perjured evidence given by this witness. Others are covered in (Pet. App. No. 4.)

The government knew of the false testimony in ample time to have corrected it, but with full knowledge of it, resisted a motion for a judgment of acquittal.

Erroneous and Prejudicial Cross-Examination of Petitioners.

The particular part of the cross-examination to which we wish to here emphasize is where the Government was permitted to cross-examine the petitioner Suhl with reference to the truthfulness of certain findings of fact made by a Referee pertaining to matters foreign to the charges in the indictment, and at a time when there was an appeal pending over jurisdiction of the Referee to make such findings. The Referee's findings and other appealed from were subsequently reversed in *Suhl v. Bumb,* 348 F. 2d 869.

This was clear error and prejudicial to the rights of the petitioners, as were other cross-examinations complained of in our opening brief.

This cross-examination was improper for several reasons:

First: It was conducted in an effort to impeach the witness Suhl. A witness cannot be impeached upon an immaterial matter.

Second: It had no relation to the subject matter of the trial; and,

Third: The findings used in this cross-examination were then pending on appeal and were not final. The Court of Appeals, Ninth Circuit, later set the judgment appealed from aside because the Referee was without jurisdiction to try the issue involved or to make said findings.

Other points raised in this petition are adequately covered in petitioner's opening brief.

Respectfully submitted,

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